

# MORGANTOWN BOARD OF ZONING APPEALS

## MINUTES

May 18, 2005

6:30 P.M.

City Council Chambers

**Members Present:** Kevin Leyden, Bernie Bossio, and Mark Furfari.

**Members Absent:** Nick Iannone and Jim Rockis.

**Staff Present:** Jim Wood, Planning Director.

### MATTERS OF BUSINESS:

The minutes of April 20, 2005, were deferred to the next meeting.

### OLD BUSINESS:

1. **V05-06 / Williams / 100 Third Street:** Request by Mike Williams for variance approval from the *Table 2, Residential Development Standards* for property located at 100 Third Street. Tax Map #20 Parcel #53; an M-U, Mixed Use District. **Applicant has requested that these issues be tabled until June 15, 2005.**

### NEW BUSINESS:

2. **CU05-08 / Yip / 1389 University Avenue:** Request by Ching Yip to add two one-bedroom dwelling units to the ground floor of 1389 University Avenue (multi-family in a B-4 District). Tax Map #26A, Parcels #1-4 a B-4, General Business District.

J. Wood presented the staff report stating that Mrs. Yip was approved in October of 2004 for converting most of the building at 1389 University Avenue (formerly Mode Roman) into apartments, reserving the basement space for the existing Asian food market. The Planning Commission and BZA approved the creation of two 3-bedroom units, eighteen 2-bedroom units, and two 1-bedroom units in the building.

J. Wood read that Mrs. Yip had originally applied for two more 2-bedroom units, to be at the front of the building, but the BZA did not approve those two units, instead requiring that two retail spaces approximately 600 square feet in size each, be reserved along the University Avenue frontage. This was done to preserve the pedestrian level space along University Avenue for retail. Residential units at street level can discourage pedestrian vitality because people tend to not want to walk past them for long stretches of sidewalk.

J. Wood reported that Mrs. Yip does not wish to comply with this limitation, and is now applying to convert those two retail spaces back into a combination of residential (one bedroom units this time instead of two bedroom), with the first 6 feet of depth along the frontage reserved for display window space for the Asian market. Her reasoning is that it would preserve a retail oriented store window, while at the same time give the market some University Avenue exposure that it desperately needs. As you may recall, the market entrance is at the back of the building, in the basement, with no visibility from the street.

J. Wood advised that staff generally strongly supports preservation of genuine retail space along street level in the downtown. This is especially true of the town side of University Avenue, due to its clear pedestrian orientation. On the river side of University Avenue however, exceptions have been made that allowed residential on the ground floor (the old Loving Furniture building, for example), due to its lesser importance as a pedestrian area. The Planning Commission agreed with the applicant that it is a difficult retail location and recommended approval of the request. Staff believes there are reasonable arguments on both sides of the debate, and thus offers no recommendation.

Staff's opinion on the Findings of Fact are as follows:

1. *Congestion in the streets is not increased, in that:* The conversion of retail to residential space generally causes the reverse, a decrease of traffic congestion.
2. *Safety from fire, panic, and other danger is not jeopardized, in that:* All conversions will be done according to the latest life safety codes, and no new construction.
3. *Provision of adequate light and air is not disturbed in that:* No new construction.
4. *Overcrowding of land does not result in that:* No new construction, decrease in possible traffic generation.
5. *Undue congestion of population does not result, in that:* The addition of two 1-bedroom units is a modest increase and will not affect congestion.
6. *Granting this request will not create inadequate provision of transportation, water, sewerage, schools, parks, or other public requirements, in that:* No new construction. Will actually increase supply of residential dwelling units to help alleviate market shortages.
7. *Value of buildings will be conserved, in that:* On the one hand, the building will be put to an economic use instead of sitting vacant. On the other hand, the conversion of ground floor space to apartments may make it less attractive as a retail location, should market conditions change in the future.
8. *The most appropriate use of land is encouraged, in that:* Staff believes there are arguments for and against this finding, and leaves it to the applicant to make a convincing argument.

Chou Yip, husband of applicant, stated this would be more exposure for the Asian Market and that many people do not know it is there. The display windows would look like retail but there will be no entrance door to the display there. It is a bad location for business, hard to rent, and empty looking retail space looks bad.

J. Wood asked if they planned to put a sign for the Asian Market entrance.

Mr. Yip answered yes.

B. Bossio questioned what they had done to advertise the retail space for rent since October.

Mr. Yip said that people saw them on TV for the BZA meeting and they got a few phone calls but after explaining the location, no one called back. They had a rental sign for the upstairs since 2001 and received two phone calls in four years.

B. Bossio asked if there was a sign for the current, empty retail location.

Chang Yip, applicant, asserted that the display windows will give the retail look that the City desires and she doesn't feel good about renting to retail people.

B. Bossio noted that she has not advertised that space.

K. Leyden clarified that, before October of 2004, there were no apartments in the building and now there are 22 and that, in exchange, the BZA had asked that they prepare the space for retail and try to rent it.

B. Bossio asked how many square feet the downstairs retail uses.

Mr. Yip replied that there is 10,000 square feet on each level of the building and the Asian Market uses 3,000 square feet at this time.

J. Wood explained that the BZA had requested reserving two 600 square foot spaces for retail along University Avenue.

B. Bossio asked about moving the Asian Market to the street level.

Ms. Yip clarified that there are no windows in the basement. She would lose units already approved by the BZA that could not be put in the basement.

M. Furfari asked about the façade for the Asian Market.

Mr. Yip explained that there is only a door.

B. Bossio inquired about the exception made for the Loving's Furniture building.

J. Wood replied that it had pedestrian activity only from the rail/trail and has no direct frontage on University Avenue as it sits back quite a ways..

B. Bossio asked if Ms. Yip thought it was a good location for retail when she bought the building.

Ms. Yip explained that the upstairs and downstairs were rented. When the tenants left, Mode Roman was not able to make the payments so the Asian Market was started.

M. Furfari asked about putting in an entrance with a stairwell from University Avenue.

Mr. Yip responded that the basement is at least 14 feet below street level and the building is very close to the pavement.

M. Furfari observed they are only using 1/3 of the room for the market.

Mr. Yip answered that the excess from Mode Roman will be stored there and they need the display windows to tell people we are here.

K. Leyden questioned if they could do that with a creative sign, advertising, and the access from the rail/trail.

Mr. Yip replied that advertising is costly and people miss the current sign which is visible from only one direction.

J. Wood questioned if Mode Roman used all 10,000 square feet of the first floor.

Ms. Yip answered that it did use all the space.

Mr. Yip asked if the Board members had ever tried to cross the street at that point. There is no crosswalk or pedestrian crossing signal.

B. Bossio had walked across and compared it to crossing High Street.

K. Leyden noted that the Mountain People's Co-op does pretty well.

Ms. Yip replied that it is specialized for organic food.

Mr. Yip added that the main difference is in the amount of people on the other side of the street and people are afraid to cross the street.

K. Leyden considered the unique location because of the access directly from the rail/trail.

Mr. Yip remarked that the Asian Market did not get many people from the rail/trail. Ms. Yip added that the rail/trail is down on a different level.

K. Leyden asked for public comments. There being none, the public portion was closed.

J. Wood explained the Findings of Fact for variances and conditional uses and recommended that they be individually considered.

The Board of Zoning Appeals agreed in the positive for the Findings of Fact #1 through 6 but voted negatively (3-0) on # 7 and #8.

Motion to deny the request by M. Furfari, second by B. Bossio. Motion carried unanimously.

3. **CU05-09 / Crout / 93 East End Avenue:** Request by Eric Crout for Conditional Use Home Occupation at 93 East End Avenue. Tax Map #25, Parcel #508; an R-1A, Single-Family Residential District. **The Planning Commission, on May 12, 2005, tabled this issue and it should not be acted upon by the Board of Zoning Appeals. The applicant has since decided to open the business outside the city limits and has withdrawn this request.**

## **OTHER BUSINESS:**

**Public Comments:** NONE.

**Staff Comments:**

B. Bossio asked what violation it would be if a home occupation was not registered with the city.

J. Wood answered that it would be against the business license ordinance and the zoning ordinance.

## **ADJOURNMENT**